

Serial No. 10/022,651
Page 6 of 12

REMARKS

This response accompanies an RCE, and together this response and the RCE are intended as a full and complete response to the final Office Action mailed July 13, 2005. This response is also supplemental to the responses filed September 7 and October 13, 2005. This response is also in response to the advisory actions mailed October 5 and November 3, 2005. By this response, claims 1 and 21 are amended and claim 2 is cancelled.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are anticipated or obvious under the provisions of 35 U.S.C. §§102 and 103. Further, Applicants believe that all of the claims are directed to statutory subject matter pursuant to 35 U.S.C. §101. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant response.

Amendments to the Claims

By this response, claims 1 and 21 are amended and claim 2 is cancelled. The amendments to the claims are fully supported by the Specification, Drawings and Claims as originally filed. For example, the amendments are supported at least by originally filed claim 2; page 5, line 7, to page 6, line 20; and page 7, lines 14-15.

Thus, no new matter has been added, and the Examiner is respectfully requested to enter the amendments.

35 U.S.C. §101 Rejection of Claims 1-20

The Examiner has rejected claims 1-20 as non-statutory subject matter. Applicants respectfully traverse the rejection.

In the Advisory Action mailed November 3, 2005, the Examiner alleges (emphasis added below):

"... However, original/amended claim 1 still does NOT claim

409941_1.DOC

Serial No. 10/022,651

Page 7 of 12

functional interrelationships between the data structure and the computer software AND HARDWARE COMPONENTS, as defined by MPEP 2106.IV.B.1(a).

Applicant further argues, "The presentation of the electronic program guide is in part a software component of the set top terminal, and thus the claim language, as presently presented, does in fact claim a functional interrelationship between the data structure and a computer software component."

In response, the Examiner respectfully disagrees with Applicant's argument because the EPG recites in (original/amended) claim 1 is NOT necessary to be in part a software component of the set top terminal, as Applicant alleged. The cited EPG in original/amended Claim 1 is an abstract idea that can be represented/written/drawn on a piece of paper using a pen/pencil to draw/describe the claimed abstract idea. As such, EPG draws/describes on a piece of paper is NOT in part of a software component of the set top terminal, as Applicant alleged, but rather a piece of paper that contains/stores a drawing/description of a data structure and EPG information with its interrelationship with other data, wherein the piece of paper is a computer readable media, for instance, because the information on the piece of paper could be scanned/read by a scanner into a computer for displaying to the user.

Moreover, the original claim 1 or amended claim 1's subject matter fails to produce a useful, concrete or tangible result because the claim describes an abstract idea of a data structure stored on a computer readable medium that describes how a data structure is defined without specifically describes how the data structure could be USED/PROCESSED by a PARTICULAR DEVICE, i.e., CATV transmitter, set-top terminal. The claimed abstract idea is NOT necessarily performed by a computer/set top terminal, as Applicant alleged, but the claimed abstract idea could be performed by a human being with the use of a pen/pencil for drawing/describing the claimed abstract idea of a "data structure" on a piece of paper (computer readable medium) for storage and then the information on the piece of paper could be read by a scanner into a computer for displaying."

Thus, the Examiner alleges in part that (i) claim 1 does not claim functional interrelationships between the data structure and computer software and hardware components, (ii) the EPG recited in claim 1 is not necessarily in part a software component of the set top terminal, and (iii) the subject matter of claim 1 does not produce a useful, concrete or tangible result because the claim does not recite how the data structure could be used by a device such as a set top terminal.

409941_1.DOC

Serial No. 10/022,651
Page 8 of 12

In response, the Applicants have amended claim 1 to address each of (i)-(iii) above. Starting first with (ii), claim 1 has been amended to recite "the electronic program guide being represented by a signal generated by a set top terminal using software programs stored in a memory of the set top terminal." Thus, as amended, claim 1 recites an EPG that is necessarily functionally interrelated with the software and hardware components of the set top terminal because the set top terminal generates the signal representing the EPG using software programs stored in a memory of the set top terminal.

Regarding (i), the data structure recited in claim 1 as amended is also functionally interrelated with the software and hardware components of the set top terminal because claim 1 recites that the data structure is linked to the EPG, which is functionally interrelated with the software and hardware components of the set top terminal as discussed in the previous paragraph.

Regarding (iii), the subject matter of claim 1 as amended does produce a useful, concrete or tangible result because the data structure, as claimed, is "operative to provide a link between the broadcast advertisement and an electronic program guide to provide access to electronic program guide features." As discussed above in regards to (ii), the EPG is functionally interrelated with the software and hardware components of the set top terminal, and therefore it is clear how the data structure is used by the set top terminal to produce the useful, concrete and tangible result of linking the broadcast advertisement to the EPG.

Thus, for at least the reasons discussed above, and in light of the discussion in the Applicants' responses filed on September 7 and October 13, 2005, and the Advisory Actions mailed on October 5 and November 3, 2005, the Applicants respectfully submit that claim 1 as amended recites statutory subject matter, and request that the Examiner's rejection be withdrawn.

35 U.S.C. §102 Rejection of Claims 1-5, 9-21

The Examiner has rejected claims 1-5 and 9-21 under 35 U.S.C. §102(e) as being unpatentable by Fries (US 6317885, hereinafter "Fries"). Applicants respectfully traverse the rejection.

409941_1.DOC

Serial No. 10/022,651
Page 9 of 12

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The Fries reference fails to disclose each and every element of the claimed invention, as arranged in claim 1.

Specifically, the Fries reference fails to disclose at least "wherein the data structure is formatted for broadcast, in combination with the broadcast advertisement, to the set top terminal, the broadcast advertisement comprising audio and video."

The Fries reference discloses an "interactive entertainment and information system using a television set-top box, wherein pages of information are periodically provided to the set-top box for user interaction therewith" (abstract). In particular, the Fries reference discloses (emphasis added below):

"More particularly, the information service server includes a carousel delivery application 49 for delivering a carousel 50 (FIG. 2) of rendered HTML page images to the set-top box 28 along with meta-data for each page. Each page image consists of a single frame MPEG2 video sequence that is capable of being decoded by an MPEG video decoder 52 in the set-top box 28 (FIG. 3). The meta-data for each page describe the structure and contents of the page image. As described above, the carousel 50 of page images and meta-data are delivered to a client set-top-box 28 as a standard MPEG2 Transport Stream, broadcast in-band over a six MHz NTSC channel." (column 4, lines 17-28)

Thus, the Fries reference discloses that each page image is a single frame of MPEG2 video. However, the Fries reference does not teach or suggest a data structure which is formatted for broadcast in combination a broadcast advertisement comprising audio and video.

In the Advisory Action mailed on November 3, 2005, the Examiner alleges (emphasis added below):

"In response, the Examiner refers Applicant back to the previous (Final and Advisory) Office action and further cites Col. 5, lines 35-50 in which Fries clearly discloses that digitized channels are multiplexed as data packets onto 6MHz analog channel in which encoded packets carry corresponding PIDs of Audio and Video. As discussed in the previous Advisory action, Fries's STB receives the promotion data encoded into a private data packets, which include page images that is associated with information service, Le., pay-per-view advertiser transmitted over the network (Col. 5, lines 36-Col. 6, lines 15 and lines 43-55) in which the

409941_1.DOC

Serial No. 10/022,651
Page 10 of 12

display page image (advertisement page) from advertiser having page elements, i.e., advertisements, displayed thereon including link to additional information (Col. 6, lines 48-55). Fries further discloses a page image is formatted for broadcast comprising audio (Col. 21, lines 1-Col. 22, lines 20, specifically lines 4-6 for audio) and video (Col. 4, lines 17-28 and Col. 21, lines 60-65+).

Thus, the Examiner alleges that the audio and video discussed at column 5, lines 35-50, of the Fries reference teaches the claimed "broadcast advertisement comprising audio and video." However, the Applicants respectfully disagree. The Examiner is likening the claimed broadcast advertisement to the pages of information provided by the information service discussed in the Fries reference. However, the discussion of audio and video at column 5, lines 35-50, of the Fries reference only addresses the general capabilities of the STB, i.e., the STB has PID filters that identify audio and video packets and direct them to the appropriate decoders. Moreover, what is claimed is "wherein the data structure is formatted for broadcast in combination with the broadcast advertisement to one or more set top terminals, the broadcast advertisement comprising audio and video." Thus column 5, lines 35-50 of the Fries reference do not teach "the broadcast advertisement comprising audio and video."

The Examiner further alleges that the Fries reference discloses the "page image is formatted for broadcast comprising audio." However, what is claimed is "the broadcast advertisement comprising audio and video." The portion of the Fries reference cited by the Examiner, namely column 2, lines 1-7, recites (emphasis added below):

"The PAGE_META_DATA contains the per-page meta-data, wherein TYPE=Type indicates the type of the page (e.g. Hold, Reload, Autolink, and so on), AUDIO=Ur1 identifies the URL of the background audio file (e.g., www.sounds.parakeet.com/classical.ac3), and DELAY=Time specifies the delay in seconds for Autolink pages."

Thus, the meta data discussed in the Fries reference contains a URL pointing to a background audio file, but not the audio file itself. Thus, the Fries reference does not teach or suggest "the broadcast advertisement comprising audio and video."

Therefore, the Fries reference fails to disclose each and every element of the claimed invention, as arranged in claim 1.

409941_1.DOC

Serial No. 10/022,651

Page 11 of 12

As such, Applicants submit that independent claim 1 is not anticipated and fully satisfies the requirements of 35 U.S.C. §102 and is patentable thereunder. Moreover, claim 21 contains substantially similar relevant limitations as those discussed above in regards to claim 1, and thus is also patentable under 35 U.S.C. §102. Furthermore, claims 2-5 and 9-20 depend, either directly or indirectly, from independent claims 1 and 21 and recite additional features thereof. As such and at least for the same reasons as discussed above, Applicants submit that these dependent claims are also not anticipated and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

35 U.S.C. §103(a) Rejection of Claims 6-8

The Examiner has rejected claims 6-8 under 35 U.S.C. §103(a) as being unpatentable over Fries in view of Lawler et al. (US 5805763, hereinafter "Lawler"). Applicants respectfully traverse the rejection.

Claims 6-8 depend directly or indirectly from independent claim 1. Moreover, for at least the reasons discussed above with respect to the Examiner's §102 rejection, the Fries reference fails to teach or suggest Applicants' claimed invention as a whole as recited in independent claims 1. Accordingly, any attempted combination of the Fries reference with any other additional references in a rejection against the dependent claims would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 6-8 are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the Examiner's rejection of claims 6-8 be withdrawn.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Further, Applicants submit that the pending claims are directed to statutory subject matter. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

409941_1.DOC

Serial No. 10/022,651
Page 12 of 12

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Stephen Guzzi, at (732) 383-1405, or Eamon J. Wall, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 11/14/05

EJ Wall
Eamon J. Wall
Registration No. 39,414
Attorney for Applicants

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

409941_1.DOC